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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/476,455

12/30/1999

KAZUHIRO FUJII

SIC-99-047

7874

29863

7590

05/12/2006

DELAND LAW OFFICE

P.O. BOX 69

KLAMATH RIVER, CA 96050-0069

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/476,455

Applicant(s)

FUJII, KAZUHIRO

Examiner

Gwendolyn Baxter

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10, 12-14, 16-19, 22-24, 26-48 and 50-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13, 16, 17, 19, 22-24 and 26-48 is/are allowed.
- 6) ☒ Claim(s) 10, 14, 18, 50-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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This is the eleventh Office Action for serial number 09/476,455, Bell Crank Assembly and Mounting Bracket for a Bicycle Hub, filed on December 30, 1999. Claims 10, 12-14, 16-19, 22-24, 26-48 and 50-53 are pending.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 28, 2006 has been entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 14, 18, and 50-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 6, recites "the rear frame mounting bracket portion includes an axle opening dimensioned to receive a rear wheel axle of a bicycle therein". The size of the axle opening has been defined in terms of a rear wheel axle, which has not been positively recited in combination with the bell crank mounting

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bracket but functionally claimed. Since the rear wheel axle maybe in a variety of sizes depending upon the type and size of the bicycle employed; therefore, the claim is unclear and required correction. A similar problem occurs in claim 51.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 14, 18 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,184,993 to Swenson. Regarding claims 10, 14, 18 and 51-53, Swenson discloses a one-piece mounting bracket (Fig. 5) comprising: a mounting bracket portion (2) including an opening (68), a transition portion (3) extending downwardly from and inclined relative to the mounting bracket portion (2), a rear mounting portion (6) including an opening (6a) and extending from the inclined transition portion (3), and a mounting member (5) disposed on the transition portion (3); wherein the bracket portions are arranged and capable of being dimensioned such that the bracket is capable of attachment to a bicycle rear wheel axle such that the axle may extend through the rear mounting portion, the transition portion may extend forwardly along the side of the rear wheel and upwardly from the rear mounting portion, the mounting

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bracket portion may be disposed in front of the rear frame mounting portion with the mounting opening facing upwardly (when the bicycle is lying horizontally on the ground), and the mounting member may extend laterally outward from the bicycle. Swenson does not expressly teach the rear mounting portion opening (6a) being dimensioned to receive a rear wheel axle of a bicycle; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of the opening because one would have been motivated to ensure proper sizing of the opening relative to an axle or rod to be received therein and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art.

### ***Response to Arguments***

In response to applicant's argument that there is nothing wrong with defining the dimension of a device in terms of the environment in which it is to be used. Furthermore, applicant states that the "(holding that the limitation that the claimed wheelchair have a front leg portion ... so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats thereof)" was not indefinite. See *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1575-76, 1 USPQ2d 1081, 1087-88 (Fed. Cir. 1986). The Federal Court held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed the relative dimensions would not perform differently

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than the prior art device, the claimed device was not patentably distinct from the prior art device.

In the holding mentioned above, the functionality of the wheelchair is independent from the space defined between the door frames of automobile. In applicant's present invention the axle opening is critical to receiving the rear wheel axle of the bicycle, which directly affects the functionality of the present invention. This recitation is not merely cited to define the environment in which the present invention is to be used as alleged by applicant. In response to applicant's claim that the rear wheel axle is standardized. Applicant merely recites a bicycle not the type or kind of bicycle. The rear wheel axle size is different for a child's bike than for an adult's bike. Additionally, the wheel axle size is different for a mountain, road or ten speed bike. Furthermore, applicant agrees the axle sizes do vary, if only slightly, if at all. See applicant's remarks of June 13, 2005. Although the variation may be slight, this variation could be the difference in being able to insert the rear wheel axle of the bicycle in the axle opening or not. Since applicant has not specified the type or kind of bicycle being employed, claims 10, 14, 18 and 50-53 remain rejected under 35 USC 112 as being indefinite.

In response to applicant statement "the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." Applicant's attention is directed to section 2142 of the MPEP, which states to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some

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suggestion or motivation, either in the reference themselves *or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings*. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.

Applicant's arguments filed February 28, 2006 have been fully considered but they are not persuasive.

### ***Allowable Subject Matter***

Claims 12, 13, 16, 17, 19, 22-24, 26-29, and 30-48 are allowed.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

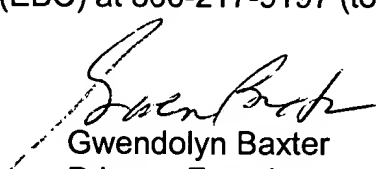
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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-6814. The examiner can normally be reached on Monday-Wednesday, 8:30am -4:00pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

May 10, 2006